

AMENDMENT NO. _____ Calendar No. _____

Purpose: To implement policies from the President's proposal to reduce waste, fraud, and abuse in Medicare and Medicaid and save taxpayer dollars.

IN THE SENATE OF THE UNITED STATES—111th Cong., 2d Sess.

H. R. 4872

To provide for reconciliation pursuant to Title II of the concurrent resolution on the budget for fiscal year 2010 (S. Con. Res. 13).

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. COBURN

Viz:

1 At the end of title I, add the following:

2 **Subtitle G—Additional Provisions**
3 **Eliminating Waste, Fraud, and**
4 **Abuse**

5 **SEC. 1601. SITE INSPECTIONS; BACKGROUND CHECKS; DE-**
6 **NIAL AND SUSPENSION OF BILLING PRIVI-**
7 **LEGES.**

8 (a) SITE INSPECTIONS FOR DME SUPPLIERS, COM-
9 MUNITY MENTAL HEALTH CENTERS, AND OTHER PRO-

1 VIDER GROUPS.—Title XVIII of the Social Security Act
2 (42 U.S.C. 1395 et seq.), as amended by sections 3022
3 and 3403 of the Patient Protection and Affordable Care
4 Act, is amended by adding at the end the following:

5 “SITE INSPECTIONS FOR DME SUPPLIERS, COMMUNITY
6 MENTAL HEALTH CENTERS, AND OTHER PROVIDER
7 GROUPS

8 “SEC. 1899B. (a) SITE INSPECTIONS.—

9 “(1) IN GENERAL.—The Secretary shall con-
10 duct a site inspection for each applicable provider
11 (as defined in paragraph (2)) that applies to enroll
12 under this title in order to provide items or services
13 under this title. Such site inspection shall be in addi-
14 tion to any other site inspection that the Secretary
15 would otherwise conduct with regard to an applica-
16 ble provider.

17 “(2) APPLICABLE PROVIDER DEFINED.—

18 “(A) IN GENERAL.—Except as provided in
19 subparagraph (B), in this section the term ‘ap-
20 plicable provider’ means—

21 “(i) a supplier of durable medical
22 equipment (including items described in
23 section 1834(a)(13));

24 “(ii) a supplier of prosthetics,
25 orthotics, or supplies (including items de-

1 scribed in paragraphs (8) and (9) of sec-
2 tion 1861(s));

3 “(iii) a community mental health cen-
4 ter; or

5 “(iv) any other provider group, as de-
6 termined by the Secretary (including sup-
7 pliers, both participating suppliers and
8 non-participating suppliers, as such terms
9 are defined for purposes of section 1842).

10 “(B) EXCEPTION.—In this section, the
11 term ‘applicable provider’ does not include—

12 “(i) a physician that provides durable
13 medical equipment (as described in sub-
14 paragraph (A)(i)) or prosthetics, orthotics,
15 or supplies (as described in subparagraph
16 (A)(ii)) to an individual as incident to an
17 office visit by such individual; or

18 “(ii) a hospital that provides durable
19 medical equipment (as described in sub-
20 paragraph (A)(i)) or prosthetics, orthotics,
21 or supplies (as described in subparagraph
22 (A)(ii)) to an individual as incident to an
23 emergency room visit by such individual.

24 “(b) STANDARDS AND REQUIREMENTS.—In con-
25 ducting the site inspection pursuant to subsection (a), the

1 Secretary shall ensure that the site being inspected is in
2 full compliance with all the conditions and standards of
3 participation and requirements for obtaining billing privi-
4 leges under this title.

5 “(c) TIME.—The Secretary shall conduct the site in-
6 spection for an applicable provider prior to the issuance
7 of billing privileges under this title to such provider.

8 “(d) TIMELY REVIEW.—The Secretary shall provide
9 for procedures to ensure that the site inspection required
10 under this section does not unreasonably delay the
11 issuance of billing privileges under this title to an applica-
12 ble provider.”.

13 (b) BACKGROUND CHECKS.—Title XVIII of the So-
14 cial Security Act (42 U.S.C. 1395 et seq.) (as amended
15 by subsection (a)) is amended by adding at the end the
16 following new section:

17 “BACKGROUND CHECKS; DENIAL AND SUSPENSION OF
18 BILLING PRIVILEGES

19 “SEC. 1899C. (a) BACKGROUND CHECK RE-
20 QUIRED.—Except as provided in subsection (b), in addi-
21 tion to any screening conducted under section 1866(j), the
22 Secretary shall conduct a background check on any indi-
23 vidual or entity that enrolls under this title for the purpose
24 of furnishing any item or service under this title, including
25 any individual or entity that is a supplier, a person with
26 an ownership or control interest, a managing employee (as

1 defined in section 1126(b)), or an authorized or delegated
2 official of the individual or entity. In performing the back-
3 ground check, the Secretary shall—

4 “(1) conduct the background check before au-
5 thorizing billing privileges under this title to the in-
6 dividual or entity, respectively;

7 “(2) include a search of criminal records in the
8 background check;

9 “(3) provide for procedures that ensure the
10 background check does not unreasonably delay the
11 authorization of billing privileges under this title to
12 an eligible individual or entity, respectively; and

13 “(4) establish criteria for targeted reviews when
14 the individual or entity renews participation under
15 this title, with respect to the background check of
16 the individual or entity, respectively, to detect
17 changes in ownership, bankruptcies, or felonies by
18 the individual or entity.

19 “(b) USE OF STATE LICENSING PROCEDURE.—The
20 Secretary may use the results of a State licensing proce-
21 dure as a background check under subsection (a) if the
22 State licensing procedure meets the requirements of such
23 subsection.

24 “(c) ATTORNEY GENERAL REQUIRED TO PROVIDE
25 INFORMATION.—

1 “(1) IN GENERAL.—Upon request of the Sec-
2 retary, the Attorney General shall provide the crimi-
3 nal background check information referred to in sub-
4 section (a)(2) to the Secretary.

5 “(2) RESTRICTION ON USE OF DISCLOSED IN-
6 FORMATION.—The Secretary may only use the infor-
7 mation disclosed under subsection (a) for the pur-
8 pose of carrying out the Secretary’s responsibilities
9 under this title.

10 “(d) REFUSAL TO AUTHORIZE BILLING PRIVI-
11 LEGES.—

12 “(1) AUTHORITY.—In addition to any other
13 remedy available to the Secretary, the Secretary may
14 refuse to authorize billing privileges under this title
15 to an individual or entity if the Secretary deter-
16 mines, after a background check conducted under
17 this section, that such individual or entity, respec-
18 tively, has a history of acts that indicate authoriza-
19 tion of billing privileges under this title to such indi-
20 vidual or entity, respectively, would be detrimental
21 to the best interests of the program or program
22 beneficiaries. Such acts may include—

23 “(A) any bankruptcy;

24 “(B) any act resulting in a civil judgment
25 against such individual or entity; or

1 “(C) any felony conviction under Federal
2 or State law.

3 “(2) REPORTING OF REFUSAL TO AUTHORIZE
4 BILLING PRIVILEGES TO THE HEALTHCARE INTEG-
5 RITY AND PROTECTION DATA BANK (HIPDB).—

6 “(A) IN GENERAL.—Subject to subpara-
7 graph (B), a determination under paragraph
8 (1) to refuse to authorize billing privileges
9 under this title to an individual or entity as a
10 result of a background check conducted under
11 this section shall be reported to the healthcare
12 integrity and protection data bank established
13 under section 1128E in accordance with the
14 procedures for reporting final adverse actions
15 taken against a health care provider, supplier,
16 or practitioner under that section.

17 “(B) EXCEPTION.—Any determination de-
18 scribed in subparagraph (A) that the Secretary
19 specifies is not appropriate for inclusion in the
20 healthcare integrity and protection data bank
21 established under section 1128E shall not be
22 reported to such data bank.”.

23 (c) DENIAL AND SUSPENSION OF BILLING PRIVI-
24 LEGES.—Section 1899C of the Social Security Act, as

1 added by subsection (b), is amended by adding at the end
2 the following new subsection:

3 “(e) AUTHORITY TO SUSPEND BILLING PRIVILEGES
4 OR REFUSE TO AUTHORIZE ADDITIONAL BILLING PRIVI-
5 LEGES.—

6 “(1) IN GENERAL.—The Secretary may suspend
7 any billing privilege under this title authorized for
8 an individual or entity or refuse to authorize any ad-
9 ditional billing privilege under this title to such indi-
10 vidual or entity if—

11 “(A) such individual or entity, respectively,
12 has an outstanding overpayment due to the
13 Secretary under this title;

14 “(B) payments under this title to such in-
15 dividual or entity, respectively, have been sus-
16 pended; or

17 “(C) 100 percent of the payment claims
18 under this title for such individual or entity, re-
19 spectively, are reviewed on a pre-payment basis.

20 “(2) APPLICATION TO RESTRUCTURED ENTI-
21 TIES.—In the case that an individual or entity is
22 subject to a suspension or refusal of billing privileges
23 under this section, if the Secretary determines that
24 the ownership or management of a new entity is
25 under the control or management of such an indi-

1 vidual or entity subject to such a suspension or re-
2 fusal, the new entity shall be subject to any such ap-
3 plicable suspension or refusal in the same manner
4 and to the same extent as the initial individual or
5 entity involved had been subject to such applicable
6 suspension or refusal.

7 “(3) DURATION OF SUSPENSION.—A suspen-
8 sion of billing privileges under this subsection, with
9 respect to an individual or entity, shall be in effect
10 beginning on the date of the Secretary’s determina-
11 tion that the offense was committed and ending not
12 earlier than such date on which all applicable over-
13 payments and other applicable outstanding debts
14 have been paid and all applicable payment suspen-
15 sions have been lifted.”.

16 (d) REGULATIONS; EFFECTIVE DATE.—

17 (1) REGULATIONS.—Not later than one year
18 after the date of the enactment of this Act, the Sec-
19 retary of Health and Human Services shall promul-
20 gate such regulations as are necessary to implement
21 the amendments made by subsections (a), (b), and
22 (c).

23 (2) EFFECTIVE DATES.—

24 (A) SITE INSPECTIONS AND BACKGROUND
25 CHECKS.—The amendments made by sub-

1 sections (a) and (b) shall apply to applications
2 to enroll under title XVIII of the Social Secu-
3 rity Act received by the Secretary of Health and
4 Human Services on or after the first day of the
5 first year beginning after the date of the enact-
6 ment of this Act.

7 (B) DENIALS AND SUSPENSIONS OF BILL-
8 ING PRIVILEGES.—The amendment made by
9 subsection (c) shall apply to overpayments or
10 debts in existence on or after the date of the
11 enactment of this Act, regardless of whether the
12 final determination, with respect to such over-
13 payment or debt, was made before, on, or after
14 such date.

15 (e) USE OF MEDICARE INTEGRITY PROGRAM
16 FUNDS.—The Secretary of Health and Human Services
17 may use funds appropriated or transferred for purposes
18 of carrying out the Medicare integrity program established
19 under section 1893 of the Social Security Act (42 U.S.C.
20 1395ddd) to carry out the provisions of sections 1899B
21 and 1899C of that Act (as added by subsections (a) and
22 (b)).

1 **SEC. 1602. REGISTRATION AND BACKGROUND CHECKS OF**
2 **BILLING AGENCIES AND INDIVIDUALS.**

3 (a) IN GENERAL.—Title XVIII of the Social Security
4 Act (42 U.S.C. 1395 et seq.) (as amended by section
5 1601) is amended by adding at the end the following new
6 section:

7 “REGISTRATION AND BACKGROUND CHECKS OF BILLING
8 AGENCIES AND INDIVIDUALS; IDENTIFICATION NUM-
9 BERS REQUIRED FOR PROVIDERS AND SUPPLIERS

10 “SEC. 1899D. (a) REGISTRATION.—

11 “(1) IN GENERAL.—The Secretary shall estab-
12 lish procedures, including modifying the Provider
13 Enrollment and Chain Ownership System (PECOS)
14 administered by the Centers for Medicare & Med-
15 icaid Services, to provide for the registration of all
16 applicable persons in accordance with this section.

17 “(2) REQUIRED APPLICATION.—Each applicable
18 person shall submit a registration application to the
19 Secretary at such time, in such manner, and accom-
20 panied by such information as the Secretary may re-
21 quire.

22 “(3) IDENTIFICATION NUMBER.—If the Sec-
23 retary approves an application submitted under sub-
24 section (b), the Secretary shall assign a unique iden-
25 tification number to the applicable person.

1 “(4) REQUIREMENT.—Every claim for reim-
2 bursement under this title that is compiled or sub-
3 mitted by an applicable person shall contain the
4 identification number that is assigned to the applica-
5 ble person pursuant to subsection (c).

6 “(5) TIMELY REVIEW.—The Secretary shall
7 provide for procedures that ensure the timely consid-
8 eration and determination regarding approval of ap-
9 plications under this subsection.

10 “(6) DEFINITION OF APPLICABLE PERSON.—In
11 this section, the term ‘applicable person’ means any
12 individual or entity that compiles or submits claims
13 for reimbursement under this title to the Secretary
14 on behalf of any individual or entity.

15 “(b) BACKGROUND CHECKS.—

16 “(1) IN GENERAL.—Except as provided in paragraph
17 (2), the Secretary shall conduct a background check on
18 any applicable person that registers under subsection (a).
19 In performing the background check, the Secretary
20 shall—

21 “(A) conduct the background check before
22 issuing a unique identification number to the appli-
23 cable person;

24 “(B) include a search of criminal records in the
25 background check;

1 “(C) provide for procedures that ensure the
2 background check does not unreasonably delay the
3 issuance of the unique identification number to an
4 eligible applicable person; and

5 “(D) establish criteria for periodic targeted re-
6 views with respect to the background check of the
7 applicable person.

8 “(2) USE OF STATE LICENSING PROCEDURE.—The
9 Secretary may use the results of a State licensing proce-
10 dure as a background check under paragraph (1) if the
11 State licensing procedure meets the requirements of such
12 paragraph.

13 “(3) ATTORNEY GENERAL REQUIRED TO PROVIDE
14 INFORMATION.—

15 “(A) IN GENERAL.—Upon request of the Sec-
16 retary, the Attorney General shall provide the crimi-
17 nal background check information referred to in
18 paragraph (1)(B) to the Secretary.

19 “(B) RESTRICTION ON USE OF DISCLOSED IN-
20 FORMATION.—The Secretary may only use the infor-
21 mation disclosed under paragraph (1) for the pur-
22 pose of carrying out the Secretary’s responsibilities
23 under this title.

24 “(4) REFUSAL TO ISSUE UNIQUE IDENTIFICATION
25 NUMBER.—In addition to any other remedy available to

1 the Secretary, the Secretary may refuse to issue a unique
2 identification number described in subsection (a)(3) to an
3 applicable person if the Secretary determines, after a
4 background check conducted under this subsection, that
5 such person has a history of acts that indicate issuance
6 of such number under this title to such person would be
7 detrimental to the best interests of the program or pro-
8 gram beneficiaries. Such acts may include—

9 “(A) any bankruptcy;

10 “(B) any act resulting in a civil judgment
11 against such person; or

12 “(C) any felony conviction under Federal or
13 State law.

14 “(c) IDENTIFICATION NUMBERS FOR PROVIDERS
15 AND SUPPLIERS.—The Secretary shall establish proce-
16 dures to ensure that each provider of services and each
17 supplier that submits claims for reimbursement under this
18 title to the Secretary is assigned a unique identification
19 number.”.

20 (b) PERMISSIVE EXCLUSION.—Section 1128(b) of
21 the Social Security Act (42 U.S.C. 1320a–7(b)), as
22 amended by section 6402(d) of the Patient Protection and
23 Affordable Care Act, is amended by adding at the end the
24 following:

1 “(17) FRAUD BY APPLICABLE PERSON.—An ap-
2 plicable person (as defined in section 1899D(a)(6))
3 that the Secretary determines knowingly submitted
4 or caused to be submitted a claim for reimbursement
5 under title XVIII that the applicable person knows
6 or should know is false or fraudulent.”.

7 (c) REGULATIONS; EFFECTIVE DATE.—

8 (1) REGULATIONS.—Not later than one year
9 after the date of the enactment of this Act, the Sec-
10 retary of Health and Human Services shall promul-
11 gate such regulations as are necessary to implement
12 the amendments made by subsections (a) and (b).

13 (2) EFFECTIVE DATE.—The amendments made
14 by subsections (a) and (b) shall apply to applicable
15 persons and other entities on and after the first day
16 of the first year beginning after the date of the en-
17 actment of this Act.

18 **SEC. 1603. EXPANDED ACCESS TO THE HEALTHCARE IN-**
19 **TEGRITY AND PROTECTION DATA BANK**
20 **(HIPDB).**

21 (a) IN GENERAL.—Section 1128E(d)(1) of the Social
22 Security Act (42 U.S.C. 1320a–7e(d)(1)), as amended by
23 section 6403(a)(2) of the Patient Protection and Afford-
24 able Care Act, is amended to read as follows:

1 “(1) AVAILABILITY.—The information in the
2 data bank maintained under this section shall be
3 available to—

4 “(A) Federal and State government agen-
5 cies and health plans, and any health care pro-
6 vider, supplier, or practitioner entering an em-
7 ployment or contractual relationship with an in-
8 dividual or entity who could potentially be the
9 subject of a final adverse action, where the con-
10 tract involves the furnishing of items or services
11 reimbursed by one or more Federal health care
12 programs (regardless of whether the individual
13 or entity is paid by the programs directly, or
14 whether the items or services are reimbursed di-
15 rectly or indirectly through the claims of a di-
16 rect provider); and

17 “(B) utilization and quality control peer
18 review organizations and accreditation entities
19 as defined by the Secretary, including but not
20 limited to organizations described in part B of
21 this title and in section 1154(a)(4)(C).”.

22 (b) NO FEES FOR USE OF HIPDB BY ENTITIES
23 CONTRACTING WITH MEDICARE.—Section 1128E(d)(2)
24 of the Social Security Act (42 U.S.C. 1320a–7e(d)(2)), as
25 amended by such section 6403(a)(2), is amended in the

1 first sentence by inserting “(other than with respect to
2 requests by Federal agencies or other entities, such as fis-
3 cal intermediaries and carriers, acting under contract on
4 behalf of such agencies)” before the period at the end.

5 (c) CRIMINAL PENALTY FOR MISUSE OF INFORMA-
6 TION.—Section 1128B(b) of the Social Security Act (42
7 U.S.C. 1320a–7b(b)) is amended by adding at the end the
8 following:

9 “(4) Whoever knowingly uses information maintained
10 in the healthcare integrity and protection data bank main-
11 tained in accordance with section 1128E for a purpose
12 other than a purpose authorized under that section shall
13 be imprisoned for not more than three years or fined
14 under title 18, United States Code, or both.”.

15 (d) EFFECTIVE DATE.—The amendments made by
16 this section shall take effect on the date of the enactment
17 of this Act.

18 **SEC. 1604. LIABILITY OF MEDICARE ADMINISTRATIVE CON-**
19 **TRACTORS FOR CLAIMS SUBMITTED BY EX-**
20 **CLUDED PROVIDERS.**

21 (a) REIMBURSEMENT TO THE SECRETARY FOR
22 AMOUNTS PAID TO EXCLUDED PROVIDERS.—Section
23 1874A(b) of the Social Security Act (42 U.S.C.
24 1395kk(b)) is amended by adding at the end the following
25 new paragraph:

1 “(6) REIMBURSEMENTS TO SECRETARY FOR
2 AMOUNTS PAID TO EXCLUDED PROVIDERS.—The
3 Secretary shall not enter into a contract with a
4 Medicare administrative contractor under this sec-
5 tion unless the contractor agrees to reimburse the
6 Secretary for any amounts paid by the contractor
7 for a service under this title which is furnished by
8 an individual or entity during any period for which
9 the individual or entity is excluded, pursuant to sec-
10 tion 1128, 1128A, or 1156, from participation in the
11 health care program under this title if the amounts
12 are paid after the 60-day period beginning on the
13 date the Secretary provides notice of the exclusion to
14 the contractor, unless the payment was made as a
15 result of incorrect information provided by the Sec-
16 retary or the individual or entity excluded from par-
17 ticipation has concealed or altered their identity.”.

18 (b) CONFORMING REPEAL OF MANDATORY PAYMENT
19 RULE.—Section 1862(e) of the Social Security Act (42
20 U.S.C. 1395y(e)) is amended—

21 (1) in paragraph (1)(B), by striking “and when
22 the person” and all that follows through “person”;
23 and

24 (2) by amending paragraph (2) to read as fol-
25 lows:

1 “(2) No individual or entity may bill (or collect any
2 amount from) any individual for any item or service for
3 which payment is denied under paragraph (1). No indi-
4 vidual is liable for payment of any amounts billed for such
5 an item or service in violation of the preceding sentence.”.

6 (c) EFFECTIVE DATE.—

7 (1) IN GENERAL.—The amendments made by
8 this section shall apply to claims for payment sub-
9 mitted on or after the date of the enactment of this
10 Act.

11 (2) CONTRACT MODIFICATION.—The Secretary
12 of Health and Human Services shall take such steps
13 as may be necessary to modify contracts entered
14 into, renewed, or extended prior to the date of the
15 enactment of this Act to conform such contracts to
16 the provisions of this section.

17 **SEC. 1605. COMMUNITY MENTAL HEALTH CENTERS.**

18 (a) IN GENERAL.—Section 1861(ff)(3)(B) of the So-
19 cial Security Act (42 U.S.C. 1395x(ff)(3)(B)), as amended
20 by section 1301(a), is amended by striking “entity that—
21 ” and all that follows and inserting the following: “entity
22 that—

23 “(i) provides the community mental health serv-
24 ices specified in paragraph (1) of section 1913(c) of
25 the Public Health Service Act;

1 “(ii) meets applicable certification or licensing
2 requirements for community mental health centers
3 in the State in which it is located;

4 “(iii) provides a significant share of its services
5 to individuals who are not eligible for benefits under
6 this title; and

7 “(iv) meets such additional standards or re-
8 quirements for obtaining billing privileges under this
9 title as the Secretary may specify to ensure—

10 “(I) the health and safety of beneficiaries
11 receiving such services; or

12 “(II) the furnishing of such services in an
13 effective and efficient manner.”.

14 (b) EFFECTIVE DATE.—The amendment made by
15 this section shall apply to items and services furnished on
16 or after the first day of the sixth month that begins after
17 the date of the enactment of this Act.

18 **SEC. 1606. LIMITING THE DISCHARGE OF DEBTS IN BANK-**
19 **RUPTCY PROCEEDINGS IN CASES WHERE A**
20 **HEALTH CARE PROVIDER OR A SUPPLIER EN-**
21 **GAGES IN FRAUDULENT ACTIVITY.**

22 (a) IN GENERAL.—

23 (1) CIVIL MONETARY PENALTIES.—Section
24 1128A(a) of the Social Security Act (42 U.S.C.
25 1320a–7a(a)) is amended by adding at the end the

1 following: “Notwithstanding any other provision of
2 law, amounts made payable under this section are
3 not dischargeable under section 727, 944, 1141,
4 1228, or 1328 of title 11, United States Code, or
5 any other provision of such title.”.

6 (2) RECOVERY OF OVERPAYMENT TO PRO-
7 VIDERS OF SERVICES UNDER PART A OF MEDI-
8 CARE.—Section 1815(d) of the Social Security Act
9 (42 U.S.C. 1395g(d)) is amended—

10 (A) by inserting “(1)” after “(d)”; and

11 (B) by adding at the end the following:

12 “(2) Notwithstanding any other provision of law,
13 amounts due to the Secretary under this section are not
14 dischargeable under section 727, 944, 1141, 1228, or
15 1328 of title 11, United States Code, or any other provi-
16 sion of such title if the overpayment was the result of
17 fraudulent activity, as may be defined by the Secretary.”.

18 (3) RECOVERY OF OVERPAYMENT OF BENEFITS
19 UNDER PART b OF MEDICARE.—Section 1833(j) of
20 the Social Security Act (42 U.S.C. 1395l(j)) is
21 amended—

22 (A) by inserting “(1)” after “(j)”; and

23 (B) by adding at the end the following:

24 “(2) Notwithstanding any other provision of law,
25 amounts due to the Secretary under this section are not

1 dischargeable under section 727, 944, 1141, 1228, or
2 1328 of title 11, United States Code, or any other provi-
3 sion of such title if the overpayment was the result of
4 fraudulent activity, as may be defined by the Secretary.”.

5 (4) COLLECTION OF PAST-DUE OBLIGATIONS
6 ARISING FROM BREACH OF SCHOLARSHIP AND LOAN
7 CONTRACT.—Section 1892(a) of the Social Security
8 Act (42 U.S.C. 1395ccc(a)) is amended by adding at
9 the end the following:

10 “(5) Notwithstanding any other provision of
11 law, amounts due to the Secretary under this section
12 are not dischargeable under section 727, 944, 1141,
13 1228, or 1328 of title 11, United States Code, or
14 any other provision of such title.”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 subsection (a) shall apply to bankruptcy petitions filed
17 after the date of the enactment of this Act.

18 **SEC. 1607. ILLEGAL DISTRIBUTION OF A MEDICARE OR**
19 **MEDICAID BENEFICIARY IDENTIFICATION OR**
20 **BILLING PRIVILEGES.**

21 Section 1128B(b) of the Social Security Act (42
22 U.S.C. 1320a–7b(b)), as amended by section 1603, is
23 amended by adding at the end the following:

24 “(5) Whoever knowingly, intentionally, and with the
25 intent to defraud purchases, sells or distributes, or ar-

1 ranges for the purchase, sale, or distribution of two or
2 more Medicare or Medicaid beneficiary identification num-
3 bers or billing privileges under title XVIII or title XIX
4 shall be imprisoned for not more than three years or fined
5 under title 18, United States Code (or, if greater, an
6 amount equal to the monetary loss to the Federal and any
7 State government as a result of such acts), or both.”.

8 **SEC. 1608. TREATMENT OF CERTAIN SOCIAL SECURITY ACT**
9 **CRIMES AS FEDERAL HEALTH CARE OF-**
10 **FENSES.**

11 (a) IN GENERAL.—Section 24(a) of title 18, United
12 States Code, is amended—

13 (1) by striking the period at the end of para-
14 graph (2) and inserting “; or”; and

15 (2) by adding at the end the following:

16 “(3) section 1128B of the Social Security Act
17 (42 U.S.C. 1320a–7b).”.

18 (b) EFFECTIVE DATE.—The amendment made by
19 subsection (a) shall take effect on the date of the enact-
20 ment of this Act and apply to acts committed on or after
21 the date of the enactment of this Act.

1 **SEC. 1609. AUTHORITY OF OFFICE OF INSPECTOR GENERAL**
2 **OF THE DEPARTMENT OF HEALTH AND**
3 **HUMAN SERVICES.**

4 (a) **AUTHORITY.**—Notwithstanding any other provi-
5 sion of law, upon designation by the Inspector General of
6 the Department of Health and Human Services, any
7 criminal investigator of the Office of Inspector General of
8 such department may, in accordance with guidelines
9 issued by the Secretary of Health and Human Services
10 and approved by the Attorney General, while engaged in
11 activities within the lawful jurisdiction of such Inspector
12 General—

13 (1) obtain and execute any warrant or other
14 process issued under the authority of the United
15 States;

16 (2) make an arrest without a warrant for—

17 (A) any offense against the United States
18 committed in the presence of such investigator;
19 or

20 (B) any felony offense against the United
21 States, if such investigator has reasonable cause
22 to believe that the person to be arrested has
23 committed or is committing that felony offense;
24 and

1 (3) exercise any other authority necessary to
2 carry out the authority described in paragraphs (1)
3 and (2).

4 (b) FUNDS.—The Office of Inspector General of the
5 Department of Health and Human Services may receive
6 and expend funds that represent the equitable share from
7 the forfeiture of property in investigations in which the
8 Office of Inspector General participated, and that are
9 transferred to the Office of Inspector General by the De-
10 partment of Justice, the Department of the Treasury, or
11 the United States Postal Service. Such equitable sharing
12 funds shall be deposited in a separate account and shall
13 remain available until expended.

14 **SEC. 1610. UNIVERSAL PRODUCT NUMBERS ON CLAIMS**
15 **FORMS FOR REIMBURSEMENT UNDER THE**
16 **MEDICARE PROGRAM.**

17 (a) UPNS ON CLAIMS FORMS FOR REIMBURSEMENT
18 UNDER THE MEDICARE PROGRAM.—

19 (1) ACCOMMODATION OF UPNS ON MEDICARE
20 CLAIMS FORMS.—Not later than February 1, 2011,
21 all claims forms developed or used by the Secretary
22 of Health and Human Services for reimbursement
23 under the Medicare program under title XVIII of
24 the Social Security Act (42 U.S.C. 1395 et seq.)

1 shall accommodate the use of universal product
2 numbers for a UPN covered item.

3 (2) REQUIREMENT FOR PAYMENT OF CLAIMS.—

4 Title XVIII of the Social Security Act (42 U.S.C.
5 1395 et seq.), as amended by sections 1601 and
6 1602, is amended by adding at the end the following
7 new section:

8 “USE OF UNIVERSAL PRODUCT NUMBERS

9 “SEC. 1899E. (a) IN GENERAL.—No payment shall
10 be made under this title for any claim for reimbursement
11 for any UPN covered item unless the claim contains the
12 universal product number of the UPN covered item.

13 “(b) DEFINITIONS.—In this section:

14 “(1) UPN COVERED ITEM.—

“(A) IN GENERAL.—Except as provided in
subparagraph (B), the term ‘UPN covered
item’ means—

18 “(i) a covered item as that term is de-
19 fined in section 1834(a)(13);

20 “(ii) an item described in paragraph
21 (8) or (9) of section 1861(s);

22 “(iii) an item described in paragraph
23 (5) of section 1861(s); and

24 “(iv) any other item for which pay-
25 ment is made under this title that the Sec-
26 retary determines to be appropriate.

1 “(B) EXCLUSION.—The term ‘UPN cov-
2 ered item’ does not include a customized item
3 for which payment is made under this title.

4 “(2) UNIVERSAL PRODUCT NUMBER.—The
5 term ‘universal product number’ means a number
6 that is—

7 “(A) affixed by the manufacturer to each
8 individual UPN covered item that uniquely
9 identifies the item at each packaging level; and

10 “(B) based on commercially acceptable
11 identification standards such as, but not limited
12 to, standards established by the Uniform Code
13 Council-International Article Numbering Sys-
14 tem or the Health Industry Business Commu-
15 nication Council.”.

16 (3) DEVELOPMENT AND IMPLEMENTATION OF
17 PROCEDURES.—

18 (A) INFORMATION INCLUDED IN UPN.—
19 The Secretary of Health and Human Services,
20 in consultation with manufacturers and entities
21 with appropriate expertise, shall determine the
22 relevant descriptive information appropriate for
23 inclusion in a universal product number for a
24 UPN covered item.

1 (B) REVIEW OF PROCEDURE.—From the
2 information obtained by the use of universal
3 product numbers on claims for reimbursement
4 under the Medicare program, the Secretary of
5 Health and Human Services, in consultation
6 with interested parties, shall periodically review
7 the UPN covered items billed under the Health
8 Care Financing Administration Common Proce-
9 dure Coding System and adjust such coding
10 system to ensure that functionally equivalent
11 UPN covered items are billed and reimbursed
12 under the same codes.

13 (4) EFFECTIVE DATE.—The amendment made
14 by paragraph (2) shall apply to claims for reim-
15 bursement submitted on and after February 1,
16 2011.

17 (b) STUDY AND REPORTS TO CONGRESS.—

18 (1) STUDY.—The Secretary of Health and
19 Human Services shall conduct a study on the results
20 of the implementation of the provisions in para-
21 graphs (1) and (3) of subsection (a) and the amend-
22 ment to the Social Security Act in paragraph (2) of
23 such subsection.

24 (2) REPORTS.—

1 (A) PROGRESS REPORT.—Not later than 6
2 months after the date of the enactment of this
3 Act, the Secretary of Health and Human Serv-
4 ices shall submit to Congress a report that con-
5 tains a detailed description of the progress of
6 the matters studied pursuant to paragraph (1).

7 (B) IMPLEMENTATION.—Not later than 18
8 months after the date of the enactment of this
9 Act, and annually thereafter for 3 years, the
10 Secretary of Health and Human Services shall
11 submit to Congress a report that contains a de-
12 tailed description of the results of the study
13 conducted pursuant to paragraph (1), together
14 with the Secretary’s recommendations regard-
15 ing the use of universal product numbers and
16 the use of data obtained from the use of such
17 numbers.

18 (c) DEFINITIONS.—In this section:

19 (1) UPN COVERED ITEM.—The term “UPN
20 covered item” has the meaning given such term in
21 section 1899E(b)(1) of the Social Security Act (as
22 added by subsection (a)(2)).

23 (2) UNIVERSAL PRODUCT NUMBER.—The term
24 “universal product number” has the meaning given

1 such term in section 1899E(b)(2) of the Social Secu-
2 rity Act (as added by subsection (a)(2)).

3 (d) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated such sums as may be
5 necessary for the purpose of carrying out the provisions
6 in paragraphs (1) and (3) of subsection (a), subsection
7 (b), and section 1899E of the Social Security Act (as
8 added by subsection (a)(2)).

9 **SEC. 1611. USE OF TECHNOLOGY FOR REAL-TIME DATA RE-**
10 **VIEW.**

11 Part A of title XI of the Social Security Act (42
12 U.S.C. 1395 et seq.), as amended by section 6703(b) of
13 the Patient Protection and Affordable Care Act, is amend-
14 ed by adding at the end the following new section:

15 **“SEC. 1150C. USE OF TECHNOLOGY FOR REAL TIME DATA**
16 **REVIEW.**

17 “(a) IN GENERAL.—The Secretary shall establish
18 procedures for the use of technology (similar to that used
19 with respect to the analysis of credit card charging pat-
20 terns) to provide real-time data analysis of claims for pay-
21 ment under the Medicare, Medicaid, and SCHIP programs
22 under title XVIII, XIX, and XXI to identify and inves-
23 tigate unusual billing or order practices under such pro-
24 grams that could indicate fraud or abuse.

1 “(b) COMPETITIVE BIDDING.—The procedures estab-
2 lished under subsection (a) shall ensure that the imple-
3 mentation of such technology is conducted through a com-
4 petitive bidding process.

5 “(c) AUTHORIZATION OF APPROPRIATIONS.—To
6 carry out this section, there are authorized to be appro-
7 priated such sums as may be necessary, not to exceed
8 \$50,000,000 for each of fiscal years 2010 through 2014.

9 “(d) REPORT TO CONGRESS.—The Secretary shall
10 submit to Congress an annual report on the effectiveness
11 of activities conducted under this section, including a de-
12 scription of any savings to the programs referred to in
13 subsection (a) as a result of such activities and the overall
14 administrative cost of such activities and a determination
15 as to the amount of funding needed to carry out this sec-
16 tion for subsequent fiscal years, together with rec-
17 ommendations for such legislation and administrative ac-
18 tion as the Secretary determines appropriate.”.

19 **SEC. 1612. COMPREHENSIVE SANCTIONS DATABASE AND**
20 **ACCESS TO CLAIMS AND PAYMENT DATA-**
21 **BASES.**

22 (a) COMPREHENSIVE SANCTIONS DATABASE.—The
23 Secretary of Health and Human Services (in this section
24 referred to as the “Secretary”) shall establish a com-
25 prehensive sanctions database on sanctions imposed on

1 providers of services, suppliers, and related entities. Such
2 database shall be overseen by the Inspector General of the
3 Department of Health and Human Services and shall be
4 linked to related databases maintained by State licensure
5 boards and by Federal or State law enforcement agencies.

6 (b) ACCESS TO CLAIMS AND PAYMENT DATA-
7 BASES.—The Secretary shall ensure that the Inspector
8 General of the Department of Health and Human Services
9 and Federal law enforcement agencies have direct access
10 to all claims and payment databases of the Secretary
11 under the Medicare or Medicaid programs.

12 (c) CIVIL MONEY PENALTIES FOR SUBMISSION OF
13 ERRONEOUS INFORMATION.—In the case of a provider of
14 services, supplier, or other entity that knowingly submits
15 erroneous information that serves as a basis for payment
16 of any entity under the Medicare or Medicaid program,
17 the Secretary may impose a civil money penalty of not to
18 exceed \$50,000 for each such erroneous submission. A
19 civil money penalty under this subsection shall be imposed
20 and collected in the same manner as a civil money penalty
21 under subsection (a) of section 1128A of the Social Secu-
22 rity Act is imposed and collected under that section.